Supreme Court of the United States

OCTOBER TERM, 1956

No. 117

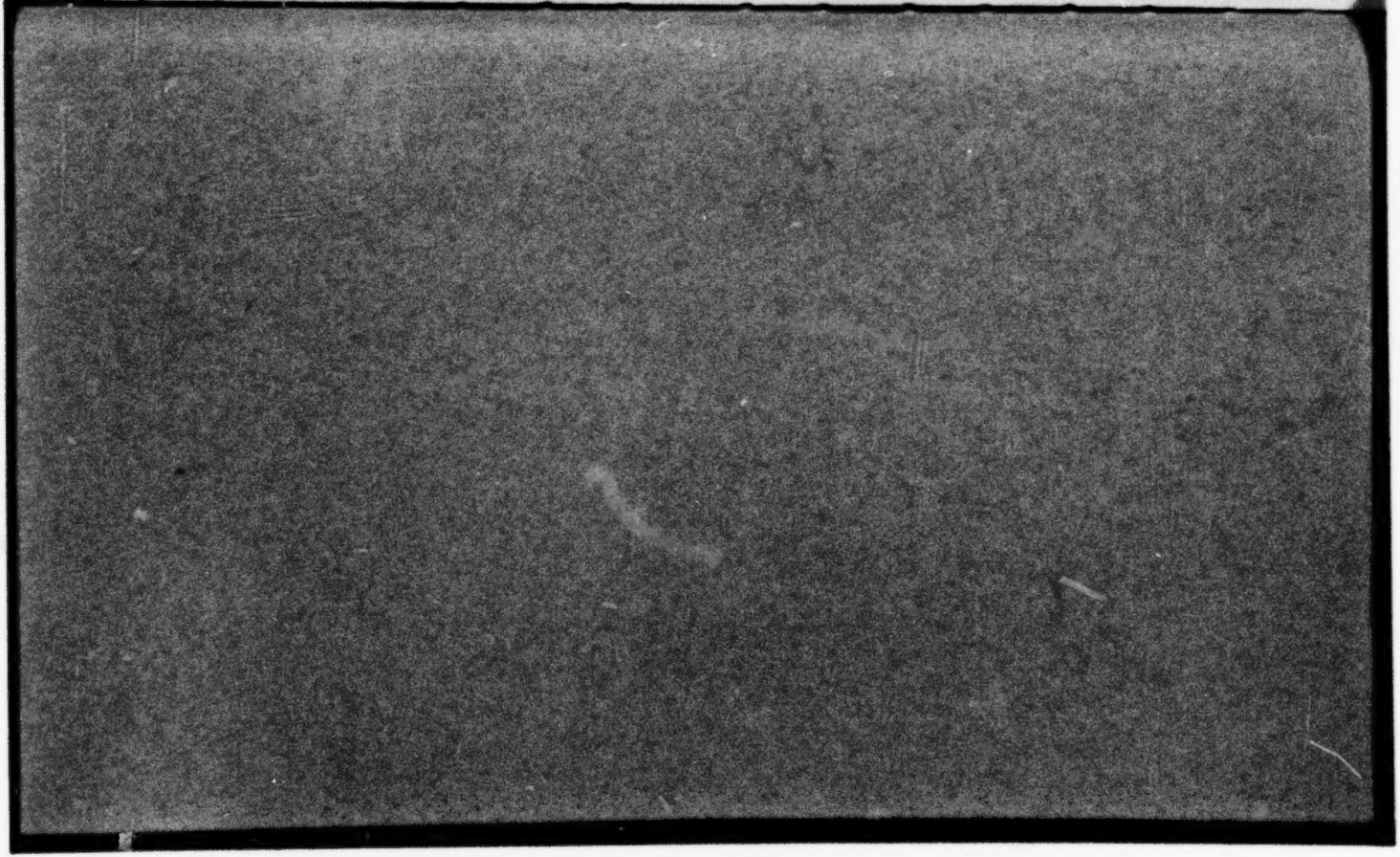
DANIEL MICHAEL McDONALD, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

(28,307)



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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 20, 1928

[a-1] [Captions omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

No. 235, Naturalization Docket

In re Appeal of DANIEL MICHAEL MACDONALD from Order Denying Petition for Naturalization

[fol. 2] PETITION FOR NATURALIZATION—Filed Dec. 22, 1926

No. 87157

U. S. Department of Labor, Naturalization Service, United States of America

To the Honorable the District Court of the United States for the District of Massachusetts:

The petition of Daniel Michael Macdonald, hereby filed, respectfully showeth:

First. My place of residence is 172 Maple Street, Malden, Massachusetts.

Second. My occupation is master mariner.

Third. I was born on the 25th day of August, anno Domini 1877, at Victoria, Nova Scotia.

Fourth. I emigrated to the United States from Callao, Peru, on or about the 3d day of September, anno Domini 1920, and arrived in the United States, at the port of New York, N. Y., on the 17th day of September, anno Domini 1920, on the vessel Ebro.

Fifth. I declared my intention to become a citizen of the United States on the 30th day of November, anno Domini 1921, at Boston, Mass., in the District Court of the United States.

Sixth. I am married. My wife's name is Mary; she was born on the — day of ——, anno Domini at Newfoundland, and now resides with me. I have one child, and the name, date and place of birth and place of residence of each of said children is as follows:

Donald, 9, July, 1917, born in Halifax, lives in Malden.

Seventh. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to George V., King of the United [fol. 3] Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, Emperor of India, of whom at this time I am a subject, and it is my intention to reside permanently in the United States.

Eighth. I am able to speak the English language.

Ninth. I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since the 17th day of September, anno Domini 1920, and in the State of Massachusetts, continuously next preceding the date of this petition, since the 18th day of September, anno Domini 1920, being a residence within this State of at least one year next preceding the date of this petition.

Tenth. I have not heretofore made petition for citizenship to any court.

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Labor, together with my affidavit and the affidavits of the two verifying witnesses thereto, required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Daniel Michael Macdonald.

Declaration of Intention No. 123716 and Certificate of Arrival from Department of Labor filed this 23d day of December, 1926.

Affidavits of Petitioner and Witnesses

United States of America,
District of Massachusetts, ss:

The aforesaid petitioner, being duly sworn, deposes and says that he is the petitioner in the above-entitled proceedings; that he has read the foregoing petition and knows the contents thereof; that the said petition is signed with his full, true name; that the same is true of his own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Daniel Michael MacDonald.

[fol. 4] Robert H. Harris, occupation, clerk, residing at Allston, Massachusetts, and Edward J. Gough, occupation, accountant, residing at Newtonville, Massachusetts, each being severally, duly, and respectively sworn, deposes and says that he is a citizen of the United States of America; that he has personally known said Macdonald, the petitioner above mentioned, to have resided in the United States continuously immediately preceding the date of filing his petition, since the — day of ——, anno Domini 1920, and in the State in which the above-entitled petition is made continuously since the — day of ——, anno Domini, 1920, and that he has personal knowledge that the said petitioner is a person of good moral character, attached to the principles of the Constitution of the United States, and that the petitioner is in every way qualified, in his opinion, to be admitted a citizen of the United States.

Robert H. Harris, Edward J. Gough.

Subscribed and sworn to before me by the above-named petitioner and witnesses in the office of the clerk of said court at Boston, Mass., this 22d day of December, anno Domini 1926. Joseph Dewan, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT

DECLARATION OF INTENTION

No. 123,716

United States Department of Labor, Naturalization Service

Invalid for all purposes seven years after the date hereof

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

IN THE DISTRICT COURT OF THE UNITED STATES

I, Daniel Michael Macdonald, aged 44 years, occupation master mariner, do declare on oath that my personal description is: Color white, complexion medium, height 6 feet 1 inch, weight 246 pounds, color of hair brown, color of eyes blue, other visible distinctive marks scar on right hand. I was born in Victoria County, Nova Scotia, on the 25th day of August, anno Domini 1877; I now reside at 16 Con- [fol. 5] necticut Ave., Somerville, Massachusetts. I emigrated to the United States of America from Callao, Peru, on the vessel Ebro; my last foreign residence was said Victoria County; I am married; the name of my wife is Mary; she was born at Newfoundland and now resides with me. It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to George V, King of Great Britain and Ireland, of whom I am now a subject; I arrived at the port of New York in the State of New York, on or about the 17th day of September, anno Domini 1920; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein: So help me God.

Daniel Michael Macdonald

Subscribed and sworn to before me in the office of the clerk of said court at Boston, Mass., this 30th day of November anno Domini 1921. Arthur D. Grandison, Deputy Clerk of the District Court of the United States. (Seal.)

This cause was thence continued to the present March Term, A. D. 1927, when, to wit, April 11, 1927, said cause comes on to be heard on the aforementioned petition and is fully heard by the court, and the following order of court is entered, denying the petition:

IN UNITED STATES DISTRICT COURT

ORDER DENYING PETITION

Upon consideration of the petition of Daniel Michael Macdonald and the motion of District Director of Naturalization for the United States in open court this eleventh day of April, 1927, it appearing that for the reason that applicant since his arrival in the United States has served on vessels other than American registry, the said petition is hereby denied

James A. Lowell, Judge.

From the order denying petition for naturalization [fol. 6] Daniel Michael Macdonald claims an appeal to the United States Circuit Court of Appeals for the First Circuit, and bond having been waived, said appeal is allowed accordingly.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT—Filed April 11, 1927

Upon hearing the above petition for naturalization, the following facts are found:

Daniel Michael Macdonald, the petitioner for naturalization, was born in Big Bras d'Or, Nova Scotia, in the Dominion of Canada, on the twenty-fifth day of August 1877, a subject of George V. King of Great Britain; that he has maintained his residence continuously in the United States and in the Commonwealth of Massachusetts since September 17, 1920, and has always behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same, and is in every respect eligible and qualified to become a citizen of the United States except that dur-

ing the said period of his residence in the Commonwealth of Massachusetts his employment has compelled him to sail from the port of Boston to various ports in Central America and return to the port of Boston as master of vessels registered under the laws of the Kingdom of Great Britain.

It is further found that the said Daniel Michael Macdonald entered the United States at the port of New York as a passenger, September 17, 1920, on the steamship Ebro of the Pacific Steam Navigation Company from Callao, Peru; that he paid the head tax imposed on aliens by the United States Government to the Pacific Steam Navigation Company as is evidenced by a receipt in the sum of eight dollars ($8) dated Callao, Peru, September 3, 1920; that since his arrival in the United States at the port of New York he has been continuously in the service of the United Fruit Company, a corporation organized under the laws of the State of New Jersey having its general offices in the City of Boston, Commonwealth of Massachusetts, as the master of one of its steamships, including at different [fol. 7] times the steamship Macabi, the steamship Maravi and the steamship San Benito, all voyages commencing and ending at United States ports, principally at the port of Boston; that the above named steamships are of British registry; that his wife joined him in the City of Boston on September 1, 1921; that thereupon he established his residence at No. 16, Connecticut Avenue, Somerville, Massachusetts, and has since then continuously maintained his residence in the vicinity of Boston for himself, his wife and his child; that the furnishings in such residence are owned by him; that his child is being educated in the schools of the Commonwealth of Massachusetts; that since his entry in the United States he has annually paid a Federal income tax, an income tax to the Commonwealth of Massachusetts and all other local taxes.

It is further found that the said Daniel Michael Macdonald filed a declaration of his intention to become a citizen of the United States in the District Court of the United States for the District of Massachusetts, at Boston, on November 30, 1921, according to the provisions of Subdivision 1 of Section 4 of the Act of Congress of June 29, 1906, as amended, and there was issued to him declaration form No. 123,716; that on December 22, 1926, he filed his

petition for naturalization in the District Court of the United States for the District of Massachusetts according to the provisions of subdivision 2 of Section 4 of said Act of Congress, which said petition was numbered 87,157; that he offered to declare in open court under oath that he will support and defend the Constitution and laws of the United States, renouncing all allegiance and fidelity to any foreign sovereignty according to the provisions of Subdivision 3 of said Act of Congress; that he offered two witnesses, citizens of the United States, to the fact of his residence in the United States and the Commonwealth of Massachusetts for more than five years immediately preceding the date of his petition, according to the provisions of Subdivision 4 of Section 4 of the said Act of Congress; that said declaration of intention conformed in every way to the law in force at the time of the making thereof and that said petition for naturalization was in manner and form correct and sufficient.

[fol. 8] Order

As the said Daniel Michael Macdonald, subsequent to establishing his residence in the Commonwealth of Massachusetts, has served on vessels other than vessels of American registery and as Subdivision 7 of Section 4 of the Act of Congress of June 29, 1906, as amended, known as the naturalization laws, provides that service on vessels other than of American registery shall not be considered as residence for naturalization purposes, it is ordered that his said petition for naturalization be denied.

James A. Lowell, United States District Judge.

In United States District Court

Petition for Appeal and Order Allowing Same—Filed June 10, 1927

To the Honorable the District Court of the United States for the District of Massachusetts:

And now comes Daniel Michael Macdonald, petitioner in the above entitled cause, and claims an appeal and prays

that the same may be allowed to the United States Circuit Court of the Appeals for the First Circuit from the decision in said cause of the District Court of the United States for said District denying the said petition.

By his Attorney, William K. Jackson.

June 10, 1927.—Appeal allowed, bond being waived. James A. Lowell, United States District Judge.

In United States District Court

Assignment of Error—Filed June 10, 1927

To the Honorable the District Court of United States for the District of Massachusetts:

Now appears the said petitioner and alleges errors in the said proceedings before this court and the judgment herein and the rulings of said court and assigns as follows:

[fol. 9] (1) That the court erred in ruling that petitioner had not established a residence for naturalization purposes under the Act of Congress of June 29, 1906, as amended.

(2) That the court erred in ruling that Subdivision 7 of Section 4 of the Act of Congress of June 29, 1906, as amended, or any language therein, is applicable to petitioner.

(3) That the court erred in ruling that Subdivision 7 of Section 4 of the said Act of Congress of June 29, 1906, as amended, or any language therein is applicable to a declaration of intention and petition filed under the general provisions of Subdivisions 1, 2, 3 and 4 of Section 4 of the said Act of Congress of June 29, 1906, as amended.

(4) That the court erred in denying said petition.

By His Attorney, William K. Jackson.

Citation, in usual form, showin service on John H. Schenk, omitted in printing.

[fol. 10] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 11] In United States Circuit Court of Appeals for the First Circuit, October Term, 1927

No. 2143

Daniel Michael Macdonald, Petitioner, Appellant,

v.

United States of America, Respondent, Appellee

Appeal from the District Court of the United States for the District of Massachusetts

Before Bingham, Johnson and Anderson, JJ.

Opinion—December 2, 1927

Johnson, Circuit Judge:

On December 22, 1926, Daniel Michael Macdonald filed in the District Court of the United States for the District of Massachusetts a petition for naturalization, in which he alleged that he came to the United States from Callao, Peru, on or about September 3, 1920, arriving at the port of New York September 17, 1920; that he had declared his intention to become a citizen of the United States on November 30, 1921; that he had resided continuously in the United States for the term of five years at least immediately preceding the date of his petition, and in the Commonwealth of Massachusetts continuously for one year.

From the findings of fact reported it appears that the petitioner, since his arrival in the United States, has been continuously in the service of the United Fruit Company, a [fol. 12] corporation organized under the laws of the state of New Jersey, having its general offices in the city of Boston, in the Commonwealth of Massachusetts, as the master of several of its steamships, all of which were of British registry; that his voyages on all of such steamships commenced and ended at United States ports, principally at the port of Boston; that his wife joined him in

the city of Boston September 1, 1921, and thereupon he established his residence in Somerville, Massachusetts, and has since continuously maintained his residence in the vicinity of Boston wth his wife and child.

His petition for naturalization was denied on the ground that he had served as master of vessels of foreign registry continuously since his entrance into the United States and therefore could not secure residence in the United States for naturalization purposes during the time of such service because of the provisions of Subdivision 7 of Section 4 of the Act of June 29, 1906, as amended by the Act of May 9, 1918.

By the original Act Congress defined in detail the requirements for naturalization, and in Subdivision 4 of Section 4 of the Act provided as follows:

"4th. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State of Territory where such court is at the time held one year at least."

May 9, 1918, Congress added by amendment seven additional subdivisions of Section 4, dealing in Subdivision 7 with the naturalization of Filipinos, Porto Ricans not citizens of the United States, and any alien of the age of twenty-one years and upward who has enlisted or shall hereafter enlist in the armies of the United States, or in United States Navy, or Marine Corps, or United States Coast Guard, or serve for three years on board of any vessel of the United States Government, or for three years or board of merchant or fishing vessels of the United States of more than twenty tons burden, and provided that they might be admitted to citizenship without proof of the required five years' continuous residence in the United States; and further provided:

[fol. 13] "That service by aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens cannot secure residence for naturalization purposes during service upon vessels of foreign registry."

It is claimed that this prohibition applies only to the aliens with which the amendment was dealing. The proviso is not limited by terms to such aliens, but is general. It is evident that Congress, in the passage of this amendment, intended to reward aliens who had enlisted in the Army and Navy of the United States and been honorably discharged, and also to encourage service upon merchant vessels or fishing vessels of the United States. That Congress had in mind the latter purpose is evidenced by the 8th Subdivision, which is as follows:

"8th. That every seaman, being an alien, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served three years upon such merchant or fishing vessels of the United States, be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen."

The chairman of the House Committee on Immigration and Naturalization, in the report made by him to the House of Representatives on May 3, 1918, in speaking of this 7th Subdivision, said:

"The subdivision also prohibits the naturalization of aliens serving on vessels of foreign registry, this construction having been maintained by some courts in view of the provisions of Section 2174, which recognizes service of aliens on vessels of American registry."

Subdivision 7 has been considered by two District Courts. In In re Nicolich, 17 Fed. (2d) 611, a case in the Eastern [fol. 14] District of Louisiana, it was held that the proviso in Subdivision 7 applied only to the classes of aliens enumerated in the amendment. This cannot be so, because one of these classes consists of aliens who have "served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States," and does not include aliens who have served upon vessels of foreign registry.

The proviso, by its terms, applies to aliens serving on vessels of foreign registry, and excludes such service from being considered as residence for naturalization purposes. It therefore has no application to aliens who have served upon vessels of American registry, and Congress must have intended it to apply to the five years' continuous residence required by the Act. In Petition of MacKinnon, 21 Fed. (2) 445, the District Court of the Eastern District of New York had the same proviso under consideration and affirming its decision in United States v. Habbick, 287 Fed. 593, held that, although the petitioner had a wife and two children living in Brooklyn, where they had lived continuously for more than the five-year period, as the petitioner had been the master of vessels flying either the British or Canadian flag for at least four years of the five years immediately preceding the filing of his petition, his residence was not such as to entitle him to naturalization. The same petitioner had filed a prior petition in the Supreme Court of the State of New York, which was denied on the same ground, and upon an appeal being taken to the appellate division the order of the Supreme Court was unanimously affirmed, the court saying:

"A master of vessels sailing under foreign flags is to some extent acting under the laws of and subject to the officials of a foreign country. Hence, the five years' residence necessary for naturalization cannot be computed from sea service on foreign vessels, even if the applicant's wife and children reside in this country."

We think the interpretation placed upon Subdivision 7 of Section 4 of the New York court is correct.

The order of the District Court is affirmed.

[fol. 15] In United States Circuit Court of Appeals

Dissenting Opinion

Anderson, J. (dissenting):

Macdonald, born in Nova Scotia in 1877, has, since 1921, lived with his wife and child in Somerville, Mass., where his child is in the public school. In every aspect except

one he is concededly entitled to citizenship. But he is a captain of a United Fruit steamship. This is a Boston enterprise which,—for reasons unknown to me and probably immaterial if known,—has its steamships under British registry. Macdonald's service,—in and out of American ports but in a ship under British registry,—is held to disentitle him to citizenship, although he has had his home in Massachusetts for more than five years. I cannot believe that Congress intended any such result to accrue from the proviso at the end of the long subdivision 7th of the Act of May 9, 1918,—40 Stats. 548. In construe that Act as did Judge Burns in the Nicolich case, 17 Fed. (2d). The Act was in essence war legislation, worked out after we had been a year involved in the great World War. This sub-division gives Filipinos, Porto Ricans, aliens enlisting in the army, the navy, the marine corps, the coast-guard, or serving in our merchant marine (seven classes in all) a three-year probative term in these respective services, instead of "the required five year residence within the United States."

After lengthy procedural provisions in this 7th sub-division, there is a caveat, near the end, reading—"provided further that service of aliens upon vessels other than of American registry, whether continuous or broken, shall not be considered as residence for naturalization purposes within the jurisdiction of the United States, and such aliens cannot secure residence for naturalization purposes during service upon vessels of foreign registry." This proviso is held to bar the applicant. But the five year period remains generally applicable. What was residence before is residence now. United States v. Habbick, 287 Fed. 593.

To my mind, all that this proviso means is that the three-year provision shall not apply if the service be on vessels of foreign registry. Read in context: "during service [fol. 16] upon vessels of foreign registry" obviously means "through such service upon vessels of foreign registry." The proviso has no bearing on rights under the five-year requirement. It simply limits the new grant, grounded on war service, to American registry. It offers a reward for three years of the designated dangerous war service; it does not penalize sea service under the flag of nations with which we were then in close association in the great war,

by taking away naturalization rights accorded residents aliens for more than a century. Cf. Act April 14, 1802, 2 Stats. 153. Statutory History of Naturalization, Appendix B, in Report to the President by the Commission on Naturalization, 69th Congress, First Session. Doc. No. 46.

At one time the statute prohibited any absence from the United States, but this prohibition was repealed in 1848. 9 Stats. 240.

There is nothing new in recognizing war service and service in the merchant marine as a ground for shortening the probative period. See the Act of July 17, 1862, 12 Stats. p. 597. Act of June, 1872, 17 Stat. p. 268, now R. L. s. 2174.

The eighth sub-division, quoted in the majority opinion, simply offers further reward and protection to alien declarants serving on vessels of the United States for three years; but I cannot see that it lends the slightest support to the theory of my brethern that the quoted proviso from the seventh sub-division is to be extended into a general taboo upon sea service under foreign registry.

[fol. 17] In United States Circuit Court of Appeals

[Title omitted]

Petition for Rehearing

The petitioner-appellant respectfully submits that the opinion rendered by this court on December 2, 1927, is based upon a misapprehension of the substance of Mr. Justice Campbell's opinion in In re Petition of MacKinnon, 21 Fed. (2d) 445. This decision was not published at the time of petitioner-appellant's hearing, and petitioner-appellant therefore did not have the opportunity of calling this court's attention to the basis of Mr. Justice Campbell's opinion. It is submitted that——

1. In denying MacKinnon's petition, the United States District Court for the Eastern District of New York did not hold that the proviso clause of subdivision 7 of section 4 was applicable to petitions for citizenship under the general provisions of the Naturalization Laws and deny the petition because of that fact, as in the case of petitioner-

[fol. 18] appellant. This proviso clause was only incidentally mentioned. The basis of the decision was stated by Mr. Justice Campbell to be the same as in his opinion in United States v. Habbick, 287 Fed. 593, and as in Mr. Justice Callaghan's opinion in In re Wills, 169 N. Y. Supp. 261. The opinion in United States v. Habbick states that Habbick returned to his native country and there shipped on foreign registered vessels. He therefore relinquished his residence (domicile). Mr. Justice Campbell stated that, had he shipped on vessels from United States ports while a resident of the United States, and returned to United States ports, he would have been entitled to citizenship. In In re Willis the opinion states that Willis was married prior to coming to the United States in 1910, but did not bring his wife to the United States for over five years. The court therefore held that his being ashore in the United States was a matter of convenience and without any bona-fide intention of becoming a resident. Willis had never established a bona fide domicile in the United States.

2. Mr. Justice Campbell's opinion in the MacKinnon case must be examined and construed in the light of the facts to which it is applicable. There is no statement in the MacKinnon opinion which indicates that the facts are materially different from the facts in the Habbick case. There is nothing to show that MacKinnon actually established a bona fide residence (domicile) in the United States and thereafter shipped from United States ports and returned to United States ports. On the contrary, the opinion states that MacKinnon arrived in the United States on January 6, 1912, and that he was master of the British steamship "Mayaro" from January 6, 1912, to September 14, 1915, thereby indicating that he arrived in the United States on that vessel. The fact is that MacKinnon shipped on the steamship "Mayaro" in a foreign country and arrived in the United States January 6, 1912, as first officer of that steamship. The naturalization records show that he has never paid a head tax. Only on this basis can Mr. Justice Campbell reconcile his decision in the MacKinnon case [fol. 19] with his statement in the Habbick opinion that Habbick would have been entitled to admission to citizenship if he had shipped from and returned to United States ports. If, as stated in this court's opinion, this court agrees

with Mr. Justice Campbell's decision, it is submitted this court should reverse the District Court's decision which denied petitioner-appellant's application for citizenship.

Daniel Michael MacDonald, by His Attorney, William K. Jackson.

The petitioner-appellant therefore prays that the opinion rendered herein be withdrawn and a further hearing granted.

I hereby certify that the foregoing petition is in my opinion well founded, and that it is not intended for delay.

William K. Jackson.

On November 2 and 3, 1927, this cause came on to be heard, and was fully heard by the court, Honorable George H. Bingham, Honorable Charles F. Johnson and Honorable George W. Anderson, Circuit Judges, sitting.

Thereafter, to wit, on December 2, 1927, the opinion of the court (page 11) and a dissenting opinion (page 15) were filed and the following Final Decree was entered:

In United States Circuit Court of Appeals

Final Decree—December 2, 1927

This cause came on to be heard November 2 and 3, 1927, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel:

Upon consideration whereof, It is now, to wit, December 2, 1927, here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By the Court,

Arthur I. Charron, Clerk.

[fols. 30-24] Thereafter, to wit, on December 31, 1927, a petition for rehearing (page 17) was filed by appellant, and on January 12, 1928, the following Order of Court was entered:

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING REHEARING—January 12, 1928

No judge who concurred in the decree entered December 2, 1927, desiring a rehearing, It is ordered that the petition for rehearing filed December 31, 1927, be, and the same hereby is, denied.

By the Court,

Arthur I. Charron, Clerk.

Thereafter, to wit, February 4, 1928, mandate was stayed till further order of court.

Certificate of Arthur I. Charron, Clerk of U. S. C. C. A., First Circuit to foregoing transcript omitted in printing.

[fols. 25 & 26] IN SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME—Filed April 10, 1928

It is hereby ordered that the time within which application for a writ of certiorari directed to the Circuit Court of Appeals for the First Circuit and the filing of the record in the above entitled cause may be made to this Court is extended for a period of twenty days from and after April 11, 1928, to include the 1st day of May, 1928.

Oliver Wendell Holmes, Associate Justice Supreme Court of the United States.

[fol. 27] [File endorsement omitted.]

Endorsed on cover: File No. —. U. S. Circuit Court of Appeals First Circuit. Term No. —. Daniel Michael McDonald, Petitioner, vs. The United States of America. Petition for writ of certiorari and exhibit thereto. Filed —, 1928. File No. —.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 28, 1928

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.